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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

Implementation of the Non-Accounting  
Safeguards of Sections 271 and 272 of the  
Communications Act of 1934, as amended

CC Docket No. 96-149

**OPPOSITION TO PETITION FOR RECONSIDERATION**

Teleport Communications Group Inc. ("TCG") hereby opposes in part the Petition for Reconsideration submitted by BellSouth. BellSouth has requested that a regional Bell Operating Company ("RBOC") or an affiliate should be permitted to perform the installation and maintenance functions for both the local telephone company and the Section 272 affiliate. TCG opposes grant of this request, which would provide an opportunity for the RBOC and its Section 272 affiliate to circumvent the separate affiliate requirement established by the Telecommunications Act of 1996.<sup>1/</sup>

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<sup>1/</sup> 47 U.S.C. § 272.

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The Commission correctly found in its First Report and Order<sup>2/</sup> that permitting the same personnel to provide such services for the RBOC and the Section 272 affiliate would easily preclude independent operation, in violation of Section 272(b)(1) of the Communications Act. The Commission concluded

that allowing the same personnel to perform the operating, installation, and maintenance services associated with a BOC's network and the facilities that a section 272 affiliate owns or leases from a provider other than a BOC would create the opportunity for such substantial integration of operating functions as to preclude independent operation, in violation of section 272(b)(1).<sup>3/</sup>

TCG agrees that operation, installation, and maintenance services should be separately provided to the Section 272 affiliate. Joint provisioning of such services would threaten violation of the "operate independently" standard, require excessive monitoring to ensure against violations of improper cost allocation, and result in the unfairly favorable treatment of the RBOC and affiliates to the detriment of competing, unaffiliated entities. Only through strict separation of functions so closely related to the actual provision of service will the interests of competing carriers be adequately protected.

The Commission has already stated that these affiliates should not provide such services to each other. It will be too easy for cross-subsidization to occur between the RBOCs' local and interLATA services when one affiliate provides

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<sup>2/</sup> Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, First Report and Order, CC Docket No. 96-149, FCC 96-489 (rel. December 24, 1996).

<sup>3/</sup> Id. at ¶ 163.

important maintenance and installation functions to both. This possible occurrence is too difficult to monitor in terms of both the time and personnel that would be required to do so effectively.<sup>4/</sup> BellSouth claims that the Commission's finding on this issue is contrary to the interest of efficiency and economies of scope;<sup>5/</sup> however, the Commission has previously found that concerns regarding improper cost allocation warrant continued separation of the provisioning of these services to the RBOC and Section 272 affiliate. In the BOC Separations Order, the Commission also concluded that the sharing of these services would require "excessive, costly and burdensome regulatory involvement in the operation, plans and day-to-day activities of the carrier . . . to audit and monitor the accounting plans necessary for such sharing to take place."<sup>6/</sup> Indeed, such monitoring requirements would result in an inefficient allocation of resources just to ensure that the RBOC and affiliates were not improperly allocating costs and cross-subsidizing.

Moreover, the possibility of abuse of such an arrangement could harm the development of local exchange service competition. As the Commission has correctly determined, "[a]llowing a BOC to contract with the Section 272 affiliate for operating, installation, and maintenance services would inevitably afford the affiliate access to the BOC's facilities that is superior to that granted to the

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<sup>4/</sup> Id.

<sup>5/</sup> BellSouth at 7.

<sup>6/</sup> BOC Separations Order, 95 FCC 2d 1117, 1144 (1983).

affiliate's competitors."<sup>2/</sup> This joint provisioning of maintenance and installation functions by another affiliate is simply another means by which the RBOCs propose to skirt the separate affiliate requirement in contravention of Congress' clear intent.

Finally, the joint provisioning of maintenance and installation to an RBOC and its Section 272 affiliate is similar to permitting a third affiliate to provide both local exchange service and in-region, interLATA service, even though the RBOC itself is prohibited from doing so. As TCG stated in its Petition for Reconsideration in this proceeding, the combined provision of local and in-region, interLATA threatens the ability of the Section 272 affiliate to "operate independently" from the RBOC as required under Section 272(b)(1). The same holds true if maintenance and installation functions are provided for both services by a common affiliate or the RBOC itself. Therefore, the Commission should reaffirm its conclusion that the same personnel may not perform the installation and maintenance functions for both the RBOC and the Section 272 affiliate.

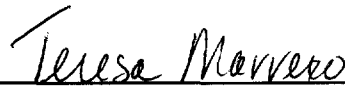
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<sup>2/</sup> Order at ¶ 163.

For these reasons, TCG requests that the Commission deny BellSouth's request to permit an RBOC affiliate to provide installation and maintenance functions for both the RBOC and the Section 272 affiliate.

Respectfully submitted,

TELEPORT COMMUNICATIONS GROUP INC.

A handwritten signature in cursive script, reading "Teresa Marrero", is positioned above a horizontal line.

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Dated: March 26, 1997

## CERTIFICATE OF SERVICE

I, Dottie E. Holman, do hereby certify that a copy of the foregoing

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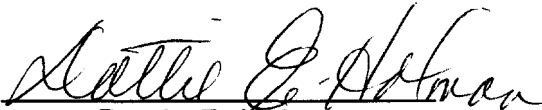
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